IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PEITION NO.10435 OF 2004

Mahantappa Tippanna Hatte. ...Petitioner.
Versus
Kondiba Nana Khandekar
since deceased by his LRs.
Laxman Kondiba Khandekar & Ors. ...Respondents.

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Mr. G.S. Godbole for the Petitioner.
Mr. Surel Shah for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

July 17, 2006.

P.C.:

Rule, by consent of Counsel returnable forthwith. Counsel appearing on behalf of the Respondents waive service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The decree for eviction has been passed on the ground that the landlord bona fide and reasonably requires the premises for his own use and occupation and on the ground that there was default on the part of the tenant in the payment of arrears of rent. On behalf of the Petitioner, it has been submitted that the Appellate

Court has ignored a material part of the evidence having bearing both on the question of the need of the landlord and on the question of default. It has been submitted that the exercise of the supervisory jurisdiction under Article 227 of the Constitution is warranted.

3. In my view, in order to appreciate the submissions each of the two grounds, can be considered separately. In so far as the ground of default is concerned, the notice of demand was issued on 12th February 1981. The demand was for the period from 11th November 1978 till 10th February 1981. According to the tenant, the rent had already been remitted for the period 11th November 1978 till 10th November 1980 by Demand Draft in the amount of Rs. 1302.14 and a letter explaining the computation thereof had been addressed to the landlord vide Exh.76 dated 3rd January 1981. In reply to the notice of demand, the tenant addressed a letter dated 17th February 1981 which is marked in evidence as Exh.75 in which there was a clear reference to the amount of rent for 1979-80 having been remitted by Demand Draft. The landlord in the course of his cross-examination specifically admitted that the tenant had sent a Demand Draft in the amount of Rs. 1302.14 and

a reply to the notice. The landlord specifically admitted that the contents of the reply to the notice of demand are correct. This is a material admission on the part of the landlord. Hence, it has been submitted on behalf of the Petitioner that the notice of demand dated 12th February 1981 admittedly covered a substantial period for which rent had already been remitted by the tenant. This aspect of the evidence particularly the admission of the landlord in the course of the cross-examination will have a bearing upon the question of whether there was any default in the payment of rent. Admittedly, in the present case, within one month of the receipt of the notice of demand, an application for the fixation of standard rent had also been filed. On behalf of the tenant, a reference has been made to a chart which is annexed at Exh.J to these proceedings showing that there was a yearly deposit of the rent of Rs.1,000/- which was the agreed annual rent in respect of the premises. A Civil Application has been filed in these proceedings, (Civil Application 3106 of 2004) in which the tenant has stated that an amount of Rs.478/- being the rent for the year 1985 after deducting monthly taxes was duly deposited in the Trial Court, but since the receipt was not traceable at the relevant time, it could not be produced in the course of the proceedings in the Court below.

Similarly, it has been submitted that a receipt indicating the payment of an amount of Rs.2,000/- for the year 1993 could not be produced during the pendency of the proceedings earlier since it was traced subsequently. In the Civil Application it has been submitted that these two receipts evidencing deposit of the arrears of rent during the pendency of the proceedings would have a material bearing on the question as to whether the tenant was regular in the payment of rent.

4. In my view, the Appellate Court has manifestly failed to consider all the material evidence on the record. The admission in the course of cross-examination of the landlord has already been adverted to in the earlier part of this order. The tenant has in addition, relied upon two receipts indicating the payment of rent in the trial Court during the pendency of the Proceedings. Having regard to these facts, I am of the view that as a fresh consideration of the entire material on the record is warranted by the Appellate Court.

5. In so far as the question of bona fide requirement is concerned, it transpires that during the pendency of the appeal

before the Appellate Court, the landlord had received possession of premises on the first floor. Additional evidence was recorded during the course of which the Deed of compromise under which the landlord obtained possession of these additional premises on the first floor was marked in evidence as Exh.71. In the Writ Petition, it has been averred that after the tenant adduced additional evidence in appeal, the landlord specifically stated that he did not wish to adduce any the evidence in rebuttal. Therefore, the evidence of the tenant has gone unrebutted. There is no explanation forthcoming on the part of the landlord as to why, though he acquired possession of the first floor, that was not suitable for his occupation. The Additional District Judge, has dealt with this aspect of the matter with the following observations:

> "The learned advocate for the Appellant-Defendant No.1 submitted before me that the Plaintiff obtained the premises on the first floor in another suit pending the suit. However, that itself will not lead to the interference that the need of the premises by Plaintiff at the time of filing of the suit is malafide or unreasonable."

The evidence as regards the acquisition of additional accommodation by the landlord during the pendency of the proceedings has a bearing on the question whether the need of

the landlord is thereby extinguished. That must be considered by the Appellate Court. In this view of the matter, I am of the view that the Appellate Court has manifestly failed to take into consideration material aspects of the case and the exercise of the supervisory jurisdiction is warranted.

6. In order to facilitate a fresh determination by the Additional District Judge, the impugned order dated 11th November is quashed and set aside. Regular Civil Appeal No.25 of 2004 is restored to the file of the Additional District Judge, Pandharpur. Parties shall appear before the Appellate Court for receiving directions on 7th August 2006. The Appellate Court shall endeavour to dispose of the appeal after hearing parties expeditiously, preferably within a period of six months. All the rights and contentions are kept open. The Petitioner would be at liberty to produce the additional receipts for the deposit of the amount of rent for the years 1985 and 1993 before the Appellate Court.

7. The Petition is accordingly disposed of.

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